Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	(Report to Congress)

COMMENTS OF SPRINT SPECTRUM L.P. D/B/A SPRINT PCS

Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS")[1/] hereby submits its Comments in response to the Common Carrier Bureau's request for public comment in connection with the Report to Congress on Universal Service required by statute.[2/] Sprint PCS believes that the Commission has not implemented the universal service program in a manner consistent with the directives of Congress because the Commission has not ensured that universal service support mechanisms will be implemented on a competitively neutral basis. Accordingly, in its Report to Congress the Commission should address the relationship between federal and state funding mechanisms and the eligibility criteria used by the FCC and state commissions for receiving universal service support.

1/ Sprint Spectrum L.P. is a joint venture formed by subsidiaries of Sprint Corporation, Cox Communications, Inc., Tele-Communications, Inc. and Comcast Corporation that provides nationwide wireless services.

2/ Public Notice, DA 98-2 (Jan. 5, 1998).

I. The Commission Has Failed To Ensure That States Conduct Their Intrastate Universal Service Programs In A Competitively And Technologically Neutral Fashion.

As the Commission's Report and Order of May 8, 1997 (the "*Order*")[3/] points out, the Telecommunications Act of 1996 (the "1996 Act") expressly allowed only for those state universal service mechanisms that are not "inconsistent with the Commission's rules to preserve and advance universal service."[4/] The Commission's universal service rules, in turn, provide that federal universal service programs must be competitively neutral, and must ensure that "any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under Section 214(e)(1)."[5/] Accordingly, state universal service programs are consistent with the Commission's universal service regulations, and therefore lawful under the 1996 Act, only if they permit full participation by all telecommunications service providers, including CMRS carriers.

The experience of Sprint PCS at the state level demonstrates that states, contrary to the intent of Congress, are not implementing universal service programs that

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3/ *Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157 (CC Docket No. 96-45, released May 8, 1997) ("*Order*").

4/ *Order* at ¶¶ 43, 818; 47 U.S.C. § 254(f). The *Order* states, in particular, that a state may establish "criteria for the designation of eligible carriers in connection with the operation of that state's universal service mechanism," but only to the extent those criteria are consistent with the Commission's universal service rules. *Order* at ¶ 136.

5/ *Order* at ¶ 145. Section 214(e)(1) of the 1996 Act specifies the standards for state designation of carriers that will receive universal service supports. Neither the FCC nor the states may impose additional requirements not contained in Section 214(e)(1). *Order* at ¶ 136.

permit full participation by all telecommunications carriers. For example, California's universal service program permits CMRS providers to recover only from the federal universal service fund. CMRS providers can thus recover only 25%, while local exchange carriers can recover 100% (25% federal, 75% state) of available universal service monies.[6/]

Pursuant to Section 214(e) of the Communications Act and California Public Utilities Commission ("CPUC") Resolution T-16105,[7/] Sprint PCS has been designated an eligible telecommunications carrier for the purposes of federal universal service support. Although Sprint PCS has met the requirements for participation in the federal program, it is unable to participate in the state's counterpart program. In short, California -- not unlike other states -- has established a universal service program that is tailored to wireline service and that, in effect, blocks wireless participation.

Upon adopting its rules, the CPUC even noted that its definition of basic service discriminates against CMRS providers, but that the underlying state statute prevented proper recognition of mobile telephony's participation in universal service:

[6/] Sprint PCS does not file these comments for the purpose of challenging California's universal service program. Instead, California is cited only as an illustrative example. Numerous other states have imposed, or propose to impose, similarly restrictive requirements. *See, e.g.*, Public Service Commission of Utah, Notice of 120-Day (Emergency Rule, released Dec. 31, 1997) (R746-360-2) ("Basic Telecommunications Service -- means a flat-rated local exchange service consisting of access to the public switched network without additional charge for usage or the number of local calls placed or received . . . .").

[7/] Telecommunications Division, Public Programs Branch (released Dec. 16, 1997) ("*California Order*").

> Despite the conclusion above, we do recognize the importance that mobile telephone technologies such as cellular and personal communication services may have for providing basic service in remote rural areas of the state. However, until the Moore Act is amended by the Legislature, the ULTS program funds should not be used to subsidize a service that can be used anywhere.[8/]

Thus, the CPUC recognizes that its definition of the "basic service" that must be provided by carriers in order to draw subsidies from the California universal service program denies wireless operators the ability to participate.

The required basic service envisioned by the CPUC, which includes such features as free unlimited incoming calls, customer choice of flat or measured rate service, free white pages telephone directories, and free access to 800 or 800-like toll-free services,[9/] are not service options CMRS carriers such as Sprint PCS provide.[10/] Unlike the definition of services designated for support under the Commission's rules,[11/] the California basic-service elements plainly are designed for wireline services and the exclusion of wireless services. As the CPUC noted in its Universal Service Order, "[w]e believe that if wireless providers desire to compete in the local exchange market, they

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8/ *California Order* at 228.

9/ *See id.*, app. B, at 5 ("Basic Service").

10/ The FCC is aware of the nature of CMRS charges. Indeed, the Commission has initiated a Notice of Inquiry concerning necessary regulatory changes that may enable carriers to provide "calling party pays" services and thereby not charge for incoming calls. *See* Calling Party Pays Service Option in Commercial Mobile Radio Services, Notice of Inquiry, FCC 97-341 (WT Docket 97-207, Oct. 23, 1997).

11/ *Order* at ¶¶ 58-87 (to be codified at 47 C.F.R. § 54.101).

should be required to offer basic service in the same type of pricing formats that are offered today by wireline carriers."[12/]

California's requirement that wireless providers offer basic service in the same type of "pricing formats"[13/] that are offered by wireline carriers is a form of State rate regulation, preempted by Section 332(c)(3) of the Communications Act.[14/] Section 332(c)(3) specifically preempts State authority to "regulate the entry of or the rates charged by any commercial mobile service." While there have been conflicting interpretations of Section 332(c)(3) with respect to preemption of State universal service requirements *other than rate or entry regulation*,[15/] there is no question that the States may not impose rate regulation on CMRS carriers -- whether in the guise of universal service requirements or otherwise -- without complying with the requirements of Section 332(c)(3). Section 332(c)(3) establishes a procedure under which the State may petition the Commission to allow it to regulate CMRS rates, where market conditions fail to protect consumers adequately from rates that are unjust, unreasonable, or unjustly or

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[12/] California Decision 96-10-066, at 29 (Oct. 25, 1996); *see also id.* at 225 ("We will adopt the suggestion by Citizens and Pacific to clarify rule 5.A.1. by specifying that only those carriers who offer residential basic service will have access to ULTS funds.").

[13/] *Id.* at 29.

[14/] 47 U.S.C. § 332(c)(3).

[15/] *Compare Order* at ¶ 791 *and Mountain Solutions v. State Corporation Commission of Kansas*, 966 F. Supp. 1043 (D. Kan. 1997) (Section 332(c)(3) does not preempt State universal service requirements other than rate and entry regulation), *appeal docketed*, No. 97-3180 (10th Cir. June 25, 1997) *with Metro Mobile CTS of Fairfield County v. Department of Public Utility Control*, 1996 WL 737480 (Conn. Super. Ct. Dec. 11, 1996) (Section 332(c)(3) preempts all State universal service requirements unless CMRS carriers are a substitute for landline service for a substantial portion of communications in the State), *appeal dismissed as moot*, 702 A.2d 1179 (Conn. 1997).

unreasonably discriminatory. Thus a procedure exists for State regulation of CMRS rates where necessary to protect consumers. But without using that procedure, the State may not utilize universal service eligibility requirements to engage in CMRS rate regulation.

Adopting wireline service offerings according to wireline policy puts CMRS carriers at a competitive disadvantage and, as described below, is wholly inconsistent with the mandate of Congress in establishing an explicit universal service regime. As Sprint PCS argued in its Petition for Clarification of the Universal Service Order,[16/] the Commission should make unmistakably clear the *Order*'s requirement that state universal service programs permit full participation by CMRS providers. Otherwise, in states that prevent or limit CMRS provider participation, the competitive and technological neutrality mandated by the 1996 Act and the *Order* will not be achieved.[17/] It is not sufficient that the Commission ensure that 25% of the funding for universal service programs be competitively neutral. From the point of view of the telecommunications user, choice will be limited and the benefits of competition, not only among providers but among technologies, will be lost.[18/]

[16/] Sprint PCS Petition for Clarification, at 1 (CC Docket No. 96-45, filed July 17, 1997).

[17/] State programs that prevent or limit participation by CMRS providers also will be subject to preemption as "prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a).

[18/] These possible outcomes demonstrate the importance of guidance, from the Commission, as to the kinds of state universal service programs that will be -- and will not be -- consistent with the Commission's rules as required by Section 254(f). With such guidance, the states are less likely to adopt programs that render the universal service policies of the Act ineffective. The Commission's confirmation that consistency with federal rules requires competitively and technologically neutral state programs is an important step in this direction.

II. State Programs That Deny Full Participation By CMRS Providers Violate The Principle Of Competitive Neutrality Required By Section 253(b) And Adopted By The Commission Under Section 254(b) Of The Communications Act.

The Commission has adopted the principle of competitive neutrality pursuant to its authority under 47 U.S.C. § 254(b)(7) to adopt additional principles governing universal service.[19/] In addition, 47 U.S.C. § 253(b) provides that state universal service requirements that impose a barrier to entry must be competitively neutral. The Commission has found that "the imposition of additional eligibility criteria would 'chill competitive entry into high cost areas.'"[20/] Typically, additional eligibility requirements deny subsidized status to competitive carriers by imposing eligibility criteria that only the incumbent LECs meet. Such additional requirements pose a barrier to entry and are required by Section 253(b) to be competitively neutral.

The Commission has explained that "competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[21/] The Commission has specifically rejected the contention that in rural and high cost areas "competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service."[22/] Indeed, the Commission stated that this contention "present[s] a false choice

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[19/] *Order* at ¶¶ 46-47.

[20/] *Id.* at ¶ 144 (quoting the Federal-State Joint Board on Universal Service).

[21/] *Id.* at ¶ 47.

[22/] *Id.* at ¶ 50.

between competition and universal service."[23/] That is because "applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit consumers."[24/] The Commission should ensure that a policy of competitive neutrality, and a rejection of protectionism, will create the proper economic incentives for CMRS providers and other carriers to invest in improving the telecommunications services available in rural and high cost areas.

III. State Programs That Deny Full Participation By CMRS Providers Violate The Principle Of Comparable Access Established By Section 254(b) Of The Communications Act.

Section 254(b)(3) of the Telecommunications Act establishes, as one of the principles of universal service, that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." Imposing on CMRS carriers eligibility requirements that were tailored for incumbent wireline carriers serves only to keep CMRS carriers out of rural and other high-cost areas, thereby denying consumers in those areas access to telecommunications services that are "reasonably comparable to those services provided in urban areas."

[23/] *Id.*

[24/] *Id.*

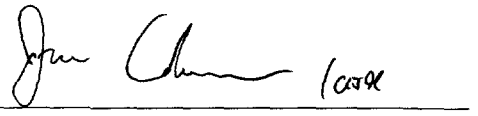
The "reasonable comparability" principle confirms that the policy of the 1996 Act to "promote competition and reduce regulation in order to secure lower prices and higher quality services" applies in *all* areas of the country -- not just in urban areas. The Commission should ensure that state commissions do not adopt eligibility requirements that only serve to limit the number of consumers who are able to obtain the competitive benefits offered by wireless technology.

Conclusion

For the foregoing reasons, Sprint PCS urges the Commission to address in its Report to Congress whether the universal service program is being implemented on a competitively neutral basis.

Respectfully submitted,

SPRINT SPECTRUM L.P.
d/b/a SPRINT PCS



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